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foreign carriers.<sup>3</sup> The settlement rates and their scheduled effective dates are based primarily on country income levels. For the upper income category, which includes Cyprus, the benchmark rate is 15c per minute. Thus, the Commission's *Benchmarks Order* requires U.S. facilities-based carriers to negotiate a settlement rate with the carrier in Cyprus, the Cyprus Telecommunications Authority ("CYTA"), that does not exceed 15c per minute. Under the *Benchmarks Order*, that rate must apply to service provided from January 1, 1999. The settlement rate now in effect for service with Cyprus is 0.275 SDR (approximately 37c per minute). We find that the Petitioners have been unsuccessful in their efforts to negotiate a settlement rate with CYTA that complies with the *Benchmark Order*. Therefore, to enforce the *Benchmarks Order* and ensure compliance by U.S. carriers, we grant the Petitioners' request. We direct all U.S. facilities-based carriers that provide service with Cyprus to conduct settlements with CYTA for international message telephone service at a rate that does not exceed 15c per minute for service provided as of January 1, 1999. We also direct U.S. international carriers to use their best efforts to negotiate a settlement agreement with CYTA that complies with the Commission's *Benchmarks Order*.

### Background

3. In its *Benchmarks Order*, the Commission set forth its enforcement policy to ensure compliance with the benchmark settlement rates and their effective dates.<sup>4</sup> As part of the enforcement effort, the Commission stated that it would take appropriate steps to ensure compliance by U.S. carriers with the requirements of the *Benchmarks Order*. The enforcement effort includes the Commission identifying foreign carriers that are "reluctant" to make meaningful progress in reducing their settlement rates to benchmark levels. Once the Commission identifies such carriers, it will notify responsible foreign government authorities about its concern with continued high settlement rates and the lack of meaningful progress in achieving lower rates, and seek their support in bringing about settlement rate reductions.<sup>5</sup> The Commission also provided procedures that U.S. carriers may follow in cases where foreign carriers fail to respond to a U.S. carrier's efforts to negotiate settlement rates that comply with the requirements of the *Benchmarks Order*. As outlined in the *Benchmarks Order*, a U.S. international carrier seeking relief may file a petition with the Commission demonstrating that it has not been able to negotiate a settlement rate that complies with the rules and policies adopted in the *Benchmarks Order*. The U.S. carrier may request that the Commission take enforcement measures to ensure that no U.S. carrier pays the foreign carrier an amount exceeding the lawful benchmark

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<sup>3</sup> The current international accounting rate system was developed as part of a regulatory tradition in which international telecommunications services were supplied through a bilateral correspondent relationship between national monopoly carriers. An accounting rate is the price a U.S. facility-based carrier negotiates with a foreign carrier for handling one minute of international telephone service. Each carrier's portion of the accounting rate is referred to as the settlement rate. In almost all cases, the settlement rate is equal to one-half of the negotiated accounting rate.

<sup>4</sup> See *Benchmarks Order* at ¶¶185-190.

<sup>5</sup> See *id.* at ¶185.

settlement rate.<sup>6</sup>

4. In the case of Cyprus, the International Bureau wrote a letter to the Ministry of Communications and Works in which the Bureau reiterated its support for reform of the international accounting rate system through multilateral discussions and requested the Ministry's urgent assistance in lowering the settlement rate for service between the United States and Cyprus.<sup>7</sup> The Bureau noted the wide disparity between CYTA's settlement rate and the Commission's benchmark rate and informed the Ministry that the Commission would be required to take appropriate enforcement measures against U.S. international carriers if the settlement rate exceeded 15c on January 1, 1999.

5. Subsequently, the Petitioners jointly filed their petition requesting enforcement of the rules and requirements of the Commission's *Benchmarks Order* on the U.S.-Cyprus route. The Bureau issued a public notice on this petition.<sup>8</sup> Petitioners claim they have made good faith efforts to negotiate an agreement with CYTA that complies with the *Benchmarks Order*, but that their attempts have failed to produce an agreement on a benchmark settlement rate. The carriers' petition includes affidavits of AT&T, MCI WorldCom, and Sprint employees with responsibility for their company's settlement arrangements with CYTA. The affidavits state that petitioners notified CYTA about the requirements imposed upon U.S. carriers by the *Benchmarks Order*. AT&T states that it informed CYTA by a letter in August 1997 and during meetings that took place in March and July of 1998 that the Commission's *Benchmarks Order* requires U.S. carriers to negotiate a settlement rate of 15c with CYTA for service provided as of January 1, 1999. AT&T reports that its efforts to negotiate a reduction in the settlement rate with CYTA to 15c were unsuccessful. In fact, AT&T states that CYTA responded that it would not reduce the settlement rate to the benchmark level by January 1, 1999.<sup>9</sup> MCI WorldCom also states that it was unable to negotiate a benchmark settlement agreement, despite numerous contacts with CYTA that included meetings and an exchange of letters.<sup>10</sup> Sprint states that CYTA made several requests to negotiate a settlement rate higher than the benchmark rate for service provided after January 1, 1999, but Sprint rejected these proposals.<sup>11</sup>

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<sup>6</sup> See *id.* at ¶186.

<sup>7</sup> See letter from Regina M. Keeney, FCC, to Dr. Lazaros S. Savvides, Ministry of Communications and Works, December 10, 1998. A copy of the letter was also sent to CYTA. The International Bureau clarified an apparent misinterpretation of the *Benchmarks Order* by CYTA in subsequent letters. See letter from Diane Cornell, FCC, to Mr. Christofi, CYTA, December 30, 1998, and letter from Rebecca Arbogast, FCC, to Dr. Stelios D. Himonas, Ministry of Communications and Works, January 22, 1999.

<sup>8</sup> See Public Notice, Petitions for Enforcement of International Settlement Benchmark Rates, DA 99-479, March 10, 1999.

<sup>9</sup> See Affidavit of Thomas R. Luciano, AT&T, February 17, 1999.

<sup>10</sup> See Affidavit of Anthony Scire, MCI WorldCom, February 23, 1999.

<sup>11</sup> See Affidavit of Daniel P. Dooley, Sprint, February 22, 1999.

6. CYTA filed an "Answer to the Petition" requesting that the Commission dismiss the petition and direct "the parties [to] use best endeavours in negotiating a scaled reduction of the current accounting rates between USA and Cyprus."<sup>12</sup> In their Answer, CYTA argues that the Commission should not enforce the *Benchmarks Order* on the U.S.-Cyprus route, but does not dispute the claims in the petition. In its Answer, CYTA proposes a schedule of settlement rate reductions that would achieve the benchmark rate eighteen months after the date called for in the *Benchmark Order*. The Petitioners filed a Reply requesting the Commission to dismiss CYTA's arguments against enforcement of the *Benchmarks Order*.<sup>13</sup>

### Discussion

7. The Commission's benchmark policy requires U.S. carriers to negotiate settlement rates with foreign carriers that do not exceed specific benchmark levels after specific dates.<sup>14</sup> The Commission adopted the benchmarks policy because, despite its concerted action and repeated expressions of concern,<sup>15</sup> as well as efforts by the International Telecommunication Union.<sup>16</sup>

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<sup>12</sup> See The Cyprus Telecommunications Authority Answer to the Petition, April 14, 1999 at 3.

<sup>13</sup> See Reply of AT&T, MCI WorldCom, and Sprint, April 26, 1999.

<sup>14</sup> The benchmark settlement rates and their effective dates are as follows:

<u>Income Category</u>	<u>Benchmark Rate</u>	<u>Effective Date</u>
Upper	15c	January 1, 1999
Upper Middle	19c	January 1, 2000
Lower Middle	19c	January 1, 2001
Lower	23c	January 1, 2002
Teledensity<1	23c	January 1, 2003

See *Benchmarks Order* at ¶111 and ¶165.

<sup>15</sup> See, e.g., *Regulation of International Accounting Rates*, CC Docket No. 90-337 (Phase II), Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 8040 (1992); Public Notice DA 96-105, 11 FCC Rcd 3152 (1996); *Policy Statement on International Accounting Rate Reform*, 11 FCC Rcd 3146 (1996); *Regulation of International Accounting Rates*, (Phase II), Fourth Report and Order, 11 FCC Rcd 20063 (1996); and *International Settlement Rates*, IB Docket No. 96-261, Notice of Proposed Rulemaking, FCC No. 96-484 (rel. December 19, 1996) (*Benchmarks Notice*).

<sup>16</sup> See, e.g., *ITU-T Recommendation D.140*, "Accounting Rate Principles for International Telephone Services," Geneva (1992) (calling for "cost-orientated" accounting rates, generally within five years).

accounting rates continue to exceed foreign carriers' costs to terminate international message telephone service from the United States. The Commission remains committed to achieving more cost-based accounting rates because high accounting rates inflate U.S. carriers' costs and, as a result, put upward pressure on the prices charged to U.S. consumers. The U.S. Court of Appeals for the D.C. Circuit upheld the *Benchmarks Order* and affirmed the Commission's authority to prescribe the maximum settlement rates U.S. international carriers may pay to foreign carriers.<sup>17</sup>

8. CYTA offers several reasons why the Commission should not require U.S. carriers to comply with the *Benchmarks Order* on the U.S.-Cyprus route. First, CYTA argues that Cyprus should not be classified as an upper income country due to its relatively low telephone density.<sup>18</sup> However, the Commission declined to use teledensity to classify countries for purposes of applying the benchmark requirements. The Commission chose to use GNP per capita as a basis for classifying countries instead of teledensity because economic development is generally a good indicator of the level of development of a country's telecommunications network and, as such, provides a reasonable measure for determining a country's ability to transition to more cost-based settlement rates. The Commission also relied on the World Bank's GNP per capita categories because, unlike teledensity, the World Bank categories are a generally accepted, objective measure of economic development.<sup>19</sup> As part of the rulemaking process, the Commission proposed income per capita as a measure for classifying countries and sought comments on this proposal.<sup>20</sup> Thus, CYTA had an opportunity to file its comments on the proposal in the benchmarks proceeding.

9. Second, CYTA alleges that enforcement of the *Benchmarks Order* on the U.S.-Cyprus route is inappropriate in light of the volume of callback traffic between the United States and Cyprus. CYTA states that the purpose of the *Benchmarks Order* is to reduce the U.S. settlement deficit and, because, according to CYTA, that deficit is largely caused by callback service, enforcement is inappropriate. CYTA further states that enforcement of the benchmarks will only exacerbate callback. We are not persuaded by CYTA's argument. As the Commission noted in the *Benchmarks Order*, its concern is not the level of the U.S. net settlement payment *per se*, but the fact that these payments exceed the costs of providing international service.<sup>21</sup> In fact, the Commission has stated repeatedly

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<sup>17</sup> *Cable and Wireless P.L.C. v. FCC et al.*, slip op. at 13.

<sup>18</sup> We note that Cyprus recently withdrew its request for a twelve month transition period after accession to the European Union (EU) in which to liberalize its telecommunication sector because EU officials determined that the high standard of the sector in Cyprus did not justify the extension. See Cyprus Financial Mirror, "Cyprus Drops Telecom, More EU Accession Chapters Ready to Close," April 21-27, 1999.

<sup>19</sup> See *Benchmarks Order* at ¶107 and ¶108.

<sup>20</sup> See *Benchmarks Notice* at 43.

<sup>21</sup> See *Benchmarks Order* at ¶36.

that it believes accounting rate should be cost-based, nondiscriminatory, and transparent.<sup>22</sup> The Commission's primary concern is that above-cost accounting rates inflate prices to U.S. consumers and create a potential for foreign entrants in the U.S. market to engage in competitive distortions and cross-subsidization among services.<sup>23</sup>

10. Third, CYTA claims that the benchmark rates do not take into account the fact that carriers serving small markets like Cyprus incur higher costs than large carriers serving large markets. CYTA also states that a circuit between the United States and the Eastern Mediterranean has a higher cost than one between the United States and continental Europe. The *Benchmarks Order* provides carriers an opportunity to request reconsideration of a benchmark rate on the grounds that the carrier's incremental costs of providing international termination service exceed the benchmark rate that applies to the particular country.<sup>24</sup> CYTA, however, provides no information to support the claims about its costs. Moreover, CYTA does not argue that its allegedly higher costs exceed the Commission's benchmark rate for Cyprus. Thus, CYTA provides no information to dispute the Commission's finding, as affirmed by the D.C. Court, that the methodology used by the Commission to calculate the benchmark rates "more than fully compensates foreign carriers."<sup>25</sup>

11. Fourth, CYTA argues that the *Benchmarks Order* should not be enforced because it would lead to a unilateral change in the accounting rate that is likely to be a breach of contract. CYTA further argues that enforcement of the *Benchmarks Order* would be in violation of ITU regulations that require bilateral negotiation of accounting rate agreements. We do not find CYTA's arguments persuasive. In its decision upholding the *Benchmarks Order*, the court found that "the Commission may modify such agreements as it deems necessary to serve the public interest."<sup>26</sup> Moreover, the Commission previously has found that its benchmark settlement rates are consistent with international law and ITU regulations and, in fact, support ITU Recommendation D.140.<sup>27</sup>

12. Finally, CYTA argues that a reduction in its accounting rate with U.S. carriers should not begin before CYTA rebalances tariffs as part of Cyprus' liberalization process. We believe that

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<sup>22</sup> See n. 15, *supra*.

<sup>23</sup> The Commission has addressed the issue of callback in another proceeding and established procedures for foreign carriers to follow if they wish to seek recourse before the Commission. See *VIA USA Ltd. et al.*, 9 FCC Rcd 2288 (1994); *on recon.*, 10 FCC Rcd 9540 (1995). We note that the main incentive for customers to use callback is the significantly lower prices charged by callback operators in comparison to the prices charged by monopoly foreign service providers such as CYTA.

<sup>24</sup> See *Benchmark Order* at ¶74.

<sup>25</sup> *Cable and Wireless P.L.C. v. FCC et al.* slip op. at 15.

<sup>26</sup> *Id.* at 14.

<sup>27</sup> See *Benchmarks Order* at ¶¶ 311-314.

foreign carriers have had ample time to make reasonable adjustments in the settlement rates they negotiate with U.S. international carriers. The Commission initially proposed its current set of benchmark settlement rates in 1996.<sup>28</sup> After receiving comments from a wide range of interested parties, the Commission adopted the *Benchmarks Order* on August 7, 1997. Since the benchmark rate for upper income countries like Cyprus did not take effect until January 1, 1999, CYTA has had nearly two years since the Commission adopted benchmark rates to make the transition from its settlement rate with U.S. carriers in 1996 to the benchmark rate of 15c. Many foreign carriers providing international service in upper income countries made the transition to the benchmark rate during this period and several negotiated settlement rates well below 15c.<sup>29</sup> In fact, international carriers in twenty-nine countries have settlement rates with U.S. international carriers that comply with the *Benchmarks Order* and international carriers in another seventeen countries have negotiated settlement agreements with U.S. international carriers that will bring them into compliance with the *Benchmarks Order*. In sum, CYTA's arguments do not provide a basis for refraining from enforcement of the *Benchmarks Order* on the U.S.-Cyprus route.

13. We find that the Petitioners have made a good faith effort to negotiate settlement agreements with CYTA that would comply with the Commission's *Benchmarks Order*. The affidavits filed by the Petitioners establish that they: (1) informed CYTA about the requirements the FCC's *Benchmarks Order* imposes on U.S. carriers regarding the benchmark settlement rate for Cyprus and its effective date; (2) exchanged letters with CYTA on issues related to negotiating a new settlement agreement so that it would comply with the *Benchmarks Order*; and (3) convened meetings with CYTA in an attempt to negotiate a new settlement agreement that would allow U.S. carriers to comply with the *Benchmarks Order*. CYTA does not dispute the facts that are presented in the petition and, in fact, CYTA has informed the Commission that the benchmark rate of 15c is not acceptable to CYTA.<sup>30</sup>

14. To enforce the Commission's *Benchmarks Order* and to ensure that U.S. international carriers provide service with Cyprus under settlement terms that comply with the Commission's policy, we direct all U.S. facilities-based carriers to conduct settlements with CYTA for international message

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<sup>28</sup> See *Benchmarks Notice*. We note that the Commission's benchmarks policy is generally consistent with a recommendation adopted by the ITU in 1992 calling for cost-oriented, nondiscriminatory, transparent accounting rates to be implemented, generally, over a five year period. See, e.g. *ITU-T Recommendation D.140*, "Accounting Rate Principles for International Telephone Services," Geneva (1992). We also note that the Commission had previously adopted benchmark ranges for countries in Asia and Europe. See *Regulation of International Accounting Rates*, CC Docket 90-337, Report and Order, 6 FCC Rcd 3552 (1991), *on recon.*, 7 FCC Rcd 8049 (1992).

<sup>29</sup> Examples of settlement rates now in effect that are well below the benchmark level include: Canada (10¢), Denmark (10.8¢), France (10.1¢), Germany (10.1¢), Hong Kong (7¢), Ireland (10.8¢), Italy (10.8¢), the Netherlands (9.5¢), Norway (8.5¢), Sweden (5.4¢), and the United Kingdom (6.8¢).

<sup>30</sup> See letter from A. Kyprianou, CYTA, to Rebecca Arbogast, FCC, February 10, 1999.

telephone service at a rate that does not exceed 15c per minute for service provided as of January 1, 1999. We also direct U.S. facilities-based international carriers to continue their efforts to negotiate a settlement agreement with CYTA that complies with the Commission's *Benchmarks Order*.

#### Ordering Clauses


15. Accordingly, IT IS ORDERED that the petition of AT&T, MCI WorldCom, and Sprint for enforcement of the Commission's *Benchmarks Order* for service with CYTA in Cyprus is GRANTED.

16. IT IS FURTHER ORDERED that all U.S. international facilities-based carriers providing service with CYTA in Cyprus shall conduct settlements for service provided on and after January 1, 1999 at a rate that does not exceed the benchmark settlement rate of 15c per minute.

17. IT IS FURTHER ORDERED that U.S. international carriers negotiate a settlement rate with CYTA in Cyprus that complies with the rules and requirements of the Commission's *Benchmarks Order*.

18. This order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this Order (see 47 C.F.R. Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION



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